STATE OF MICHIGAN

COURT OF APPEALS

WILLIAM R. BACKUS,

Plaintiff-Appellee,

v

AMY BETH FAJNOR-STRONG,

Defendant-Appellee,

and

MELODY ANN KAUFFMAN,

Defendant-Appellant,

and

M & M AUTO SALES, INC., and LANSING SCHOOL DISTRICT,

Defendants.

UNPUBLISHED
June 4, 1999

No. 204620
Ingham Circuit Court
LC No. 96-083227 NI

Before: Jansen, P.J., and Holbrook, Jr., and MacKenzie, JJ.

MEMORANDUM.

Appellant appeals by leave granted from an order of the trial court denying her motion to amend her answer to include governmental immunity as an affirmative defense. We affirm.

This case stems from an automobile accident that occurred during the morning of January 9, 1996. At the time, appellant was working full-time as a French teacher for the Lansing School District. During the course of the 1995-1996 school year, appellant began each regular school day by teaching an eighth grade class at Pattengill Middle School. Appellant would then drive to Moores Park Elementary School, where she spent the rest of the day. On January 9, 1996, appellant was making her

routine trip to Moores Elementary when the accident occurred. On May 27, 1997, appellant moved to amend her affirmative defenses to include governmental immunity. After a hearing on the motion, the trial court denied appellant's motion.

Appellant argues that the trial court erred when it denied her motion to amend the affirmative defenses found in her answer to plaintiff's first amended complaint. MCR 2.118(A)(1) states that "[a] party may amend a pleading once as a matter of course . . . within 14 days after serving the pleading if it does not require a responsive pleading." Thereafter, "[a] party may amend a pleading by leave of the court or by written consent of the adverse party." *Id.* at (A)(2). Leave to amend a responsive pleading should "be freely given when justice so requires." *Id.* We will not reverse a trial court's decision regarding such a motion unless we are convinced that the court has abused its discretion. *In the Matter of the Dissolution of F Yeager Bridge & Culvert Co*, 150 Mich App 386, 397; 389 NW2d 99 (1986). One circumstance in which justice does not require the granting of leave to amend is where an amendment would be futile. *McNees v Cedar Springs Stamping Co*, 184 Mich App 101, 103; 457 NW2d 68 (1990).

In *Haberl v Rose*, 225 Mich App 254; 570 NW2d 664 (1997), this Court held that a public school employee, who was found to have caused an injury through negligent operation of her automobile while in the course of her employment,[1] could not escape liability by means of subsection 7(2). *Id.* at 263-265. The *Haberl* Court based its holding on the conclusion that the outcome of the case was governed not by MCL 691.1407(2); MSA 3.996(407)(2), but rather by the more specific civil liability statute, MCL 257.401(1); MSA 9.2101(1).[2] *Id.* at 262. We believe that given the circumstances of the case at hand, *Haberl* is controlling. Therefore, because appellant's amendment would have been futile, we hold that the trial court did not abuse its discretion when denying appellant's motion to amend.

Affirmed.

/s/ Kathleen Jansen
/s/ Donald E. Holbrook, Jr.

[1] The defendant in *Haberl* was employed as a secretary to a school superintendent. At the time of her accident, she was distributing agendas for an upcoming meeting of the school board. *Haberl, supra* at 268 (Saad, J., dissenting).

[2] MCL.257.401(1); MSA 9.2101(1) reads in pertinent part:

> This section shall not be construed to limit the right of a person to bring a civil action for damages for injuries to either person or property resulting from a violation of this act by the owner or operator of a motor vehicle or his or her agent or servant. The owner of a motor vehicle is liable for an injury caused by the negligent operation of the motor vehicle whether the negligence consists of a violation of a statute of this state or the ordinary care standard required by common law. . . .

This present version of subsection 401(1) is substantively the same as the version scrutinized by the *Haberl* Court. Changes made to subsection 401(1) by 1995 PA 98, § 1, do not affect the applicability of *Haberl* in the case at hand.